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PATENT
Customer No. 22,852
Attorney Docket No. 09487.0003-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
John DEVANE) Group Art Unit: 1614
)
Application No.: 10/798,421) Examiner: Phyllis G. Spivack
)
Filed: March 12, 2004) Confirmation No.: 6571
)
For: TREATMENT OF INTESTINAL)
CONDITIONS WITH N-2,3,3-)
TETRAMETHYLBICYCLO[2.2.1])
HEPTAN-2-AMINE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO ELECTION OF SPECIES

In an election requirement dated November 29, 2007, the Examiner required election between conditions characterized by abnormal increases in gastrointestinal motility. Office Action at page 2. For example, "[s]pecies are exemplified in claims 1, 3, and 4." *Id.* According to the Office, "the species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species as a result of distinct etiology, such as microbial, neurogenic or idiosyncractic." *Id.* Applicant provisionally elects to prosecute the species drawn to functional bowel disorder with traverse for the reasons provided below. The elected species reads on claims 1, 3, 5, 6, 9-37, 39-42, and 44-77.

As provided under M.P.E.P. § 811, “the examiner should make a proper requirement as early as possible in the prosecution, in the first action, if possible, otherwise, as soon as the need for a proper requirement develops.” Given that such an election should be made as early as possible and the species election is directed to subject matter that was present in the application at the time of filing (as recited in original claim 2), Applicant cannot understand the timing.

Applicant also cannot understand the reasons behind the species election. As provided in the present application at paragraph [031], Applicant states that “the abnormal increases in gastrointestinal motility can be caused by one or more intestinal conditions.” Those intestinal conditions are recited in the independent claims of the present invention, which are now the subject of the election of species. Additionally, each independent claim includes language directed to, *e.g.*, “reducing gastrointestinal motility.” See claims 1, 30, and 65. To that end, those conditions have a common link.

The Office nonetheless attempts to rely upon the alleged distinct etiology, not the resulting manifestation of each of the conditions for the election of species. However, that is questionable, especially given the express language of the claims.

If the Office chooses to maintain the election requirement, Applicant respectfully expects the Office, if the elected species is found allowable, to continue to examine the full scope of the subject matter to the extent necessary to determine the patentability thereof, that is, extending the search to a reasonable number of the non-elected species according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: December 28, 2007

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